

REMARKS

Claims 4, 9, and 21-36 were pending in the application, of which claims 4, 9, and 36 have been allowed, claim 23 is objected to, claim 32 has been herein cancelled, and claims 33 and 34 have been herein amended. Reconsideration and allowance of claims 4, 9, 21-31 and 33-36 is respectfully requested.

Examiner Interview

Applicant notes with appreciation the interview afforded by the Examiner on November 1, 2005. In that interview, Applicant agreed to add the term "convex" to claim 32. By this Amendment, Applicant proposes to cancel claim 32 and rewrite claim 33 to include all the features of claim 32. Further, while the term "convex" can be used depending on perspective, in order to make the claim language more consistent with the specification, Applicant proposes to amend claim 33 to include the term "concave," rather than "convex." Therefore, proposed independent claim 33 now describes that the milled endplate of the vertebral body has a "concave shape."

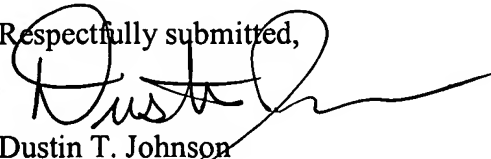
Applicant has also amended claim 34 to change the term "convex" to "concave" for the reason indicated above. Support for these amendments can be found in U.S. Patent No. 5,865,846 at least in Figs. 3, 6, and 10.

Conclusion

No new matter has been added, and the only amendments made herein are as to form. No new claim limitations have been added after the final Office Action. Applicants respectfully request entry of this paper and prompt allowance of the pending claims.

If any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the below listed telephone number.

Respectfully submitted,


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APPENDIX A

In accordance with 37 C.F.R. 1.173(c), the status of the currently pending claims after entry of this Amendment is indicated below:

Claims 1-3, 5-8, 10-20 are cancelled; and

Claims 4, 9, 21-31, and 33-36 are pending.

Because the present application is a reissue of U.S. Patent No. 5,865,846, the included claim listing (starting on page 2 of this Response) shows changes relative to the original issued claims of U.S. Patent No. 5,865,846. However, the Notice of Non-Compliant Amendment appears to indicate that it is unclear what part of claim 33 is new relative to the previously filed claim 33 in a prior Amendment after Final. Therefore, for the convenience of the Examiner, Applicants include below a marked-up version of claim 33 showing changes relative to claim 33 listed in the Amendment After Final filed on October 24, 2005 ("AAF").

33. (Currently Amended) ~~The method of claim 32,~~ A method of surgery comprising:

attaching a milling jig to a vertebral body;

milling an endplate of the vertebral body to a relatively shallow thickness as compared to an overall thickness of the vertebral body, wherein the endplate is milled to form a shape with a concave shape of the milled endplate having a depth less than its width; and

positioning a motion-preserving implant into a disc space adjacent the milled endplate, the implant have a surface that conforms to the milled endplate.